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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,723	02/27/2001	Helen Biddiscombe	4661300006	3720

35161 7590 06/24/2004

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EXAMINER

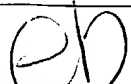
BRUENJES, CHRISTOPHER P

ART UNIT PAPER NUMBER

1772

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/763,723	<b>Applicant(s)</b> BIDDISCOMBE, HELEN	
	<b>Examiner</b> Christopher P Bruenjes	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 8, 9, 12, 13, 15-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5, 8, 9, 12, 13, 15-17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 102 rejections of claims 1-8 and 10 as anticipated by Takagi of record in Paper #5, Page 3 Paragraph 5, and Paper #11, Pages 5-6 Paragraph 8, have been withdrawn due to Applicant's amendments in the Paper filed May 3, 2004.
2. The 35 U.S.C. 112 rejections of claims 14-15 and 18-19 of record in the Office Action mailed December 29, 2003, Pages 3-4, have been withdrawn due to Applicant's amendments in the Paper filed May 3, 2004.
3. The 35 U.S.C. 102 rejections of claims 1-2, 4-7, 9, 13-19 as anticipated by Katsura in the Office Action mailed December 29, 2004, Pages 4-5 Paragraph 6, have been withdrawn due to Applicant's amendments in the Paper filed May 3, 2004.
4. The 35 U.S.C. 103 rejections of claim 3 over Katsura in the Office Action mailed December 29, 2004, Pages 7-8 Paragraph 8, have been withdrawn due to Applicant's amendments in the Paper filed May 3, 2004.

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5. The 35 U.S.C. 103 rejections of claims 8, 10, 12, and 20 over Katsura in view of Takagi of record in the Office Action mailed December 29, 2004, Page 9 Paragraph 9, have been withdrawn due to Applicant's amendments in the Paper filed May 3, 2004.

**REPEATED REJECTIONS**

6. The 35 U.S.C. 102 rejections of claims 2-5, 8-9, 12-13, 15-17, and 20 as anticipated by Leatherman et al are repeated for the reasons previously of record in the Office Action mailed December 29, 2004, Pages 5-6 Paragraph 7.

Regarding the newly added limitation to claim 13, the base layer composed of a substantially non-porous polypropylene homopolymers, the base layer of Leatherman et al is a microporous layer that is composed of a substantially non-porous polypropylene homopolymer having a filler which is a voiding agent. Therefore, the polypropylene is non-porous before the voiding agent is added in the same manner in which the instant invention base layer is non-porous, but contains a voiding agent according to claim 15 and the specification.

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**NEW REJECTIONS**

**Specification**

7. The amendment filed May 3, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material, which is not supported by the original disclosure, is as follows: that the base layer is composed of a substantially non-porous polypropylene homopolymers.

Applicant is required to cancel the new matter in the reply to this Office Action.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 2-5, 8-9, 12-13, 15-17, and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art

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that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 13, the limitation that the base layer is composed of a substantially non-porous polypropylene homopolymers is not described in the specification as being non-porous. The specification teaches away from a non-porous layer by stating on page 5, lines 10-17 that the base layer may contain a voiding agent filler, which would inherently cause the layer to have pores or voids.

Claims 1-5, 8-9, 12, 15-17, and 20 are rejected for being dependent on claim 13.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 2-5, 8-9, 12-13, 15-17, and 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 13, it is not understood if the base layer is non-porous or just that the polypropylene homopolymer is non-porous but the layer can be porous or non-porous. This is

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especially vague when the limitation is read in reference to claim 15, which states that the base layer comprises filler being a voiding agent that inherently causes the base layer to be porous.

Claims 1-5, 8-9, 12, 15-17, and 20 are rejected for being dependent on claim 13.

***ANSWERS TO APPLICANT'S ARGUMENTS***

10. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1-8 and 10 as anticipated by Takagi of record have been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 14, 15, 18, and 19 of record have been considered but are moot since the rejections have been withdrawn.

12. Applicant's arguments regarding the 35 U.S.C. 102 and 103 rejections of claims 2-5, 8-9, 12-13, 15-17, and 20 over Katsura alone or in view of Takagi of record have been considered but are moot since the rejections have been withdrawn.

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13. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 2-5, 8-9, 12-13, 15-17, and 20 as anticipated by Leatherman et al have been considered but they are not persuasive.

In response to Applicant's argument that Leatherman et al fail to teach a non-porous film structure, the claim as presented does not limit the film structure to a non-porous film, it merely limits the polypropylene homopolymer as a non-porous polymer, which can contain voiding agents as specified in claim 15. The voiding agent would cause the layer itself and the film in general to have a porous portion even when the polypropylene homopolymer of the base layer is a non-porous polymer.

#### **Conclusion**

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS**

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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

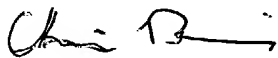
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB   
June 15, 2004

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

6/24/04